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19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 OAKLAND DIVISION

22 EPIC GAMES, INC.,
23 Plaintiff,
24 v.
25 APPLE INC.,
26 Defendant.

CASE NO. 4:20-CV-05640-YGR

**DECLARATION OF MIKE SCHMID IN
SUPPORT OF DEFENDANT APPLE INC.'S
OPPOSITION TO PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION**

1 I, Mike Schmid, declare as follows:

2 1. I make this declaration in support of Apple's Opposition to Plaintiff's Motion for a
3 Preliminary Injunction. I have personal knowledge of the matters stated herein, and if called upon to
4 do so, I could and would competently testify hereto.

5 2. I am Apple's Head of Games Business Development for the App Store. In that capacity
6 and in other positions at Apple, I have gained personal knowledge and experience concerning Apple's
7 App Store team and Worldwide Developer Relations ("WWDR" or "Developer Relations") team, and
8 the many tools, services, and benefits that Apple provides developers. I have worked particularly
9 closely with Epic Games, Inc. and its affiliates (collectively, "Epic" or "Epic Games").

10 3. Apple's investment in tools, services, and support to developers is a key reason for the
11 App Store's success. It helps ensure the store is filled with creative, useful, high-quality, and innovative
12 apps. Toward this end, Apple provides developers with tools like TestFlight, so they can test and refine
13 their apps in a controlled environment. Apple creates Application Programming Interfaces (APIs) like
14 ARKit and Metal, which assist developers to make the most of Apple's innovative hardware. As part
15 of iOS 14 alone, Apple will make more than 150,000 APIs available for all developers. In addition to
16 these tools and services, Apple also provides a tremendous amount of marketing and promotional
17 assistance to its developers, including Epic. Apple's App Store and Developer Relations teams in
18 particular, in conjunction with other Apple teams, provide developers with such benefits and support
19 services to ensure that Apple's business model generates great experiences for both developers and
20 consumers alike.

21 4. Over the past two years, Epic has received as much of these benefits and support
22 services from Apple as any other developer on the App Store.

23 5. *Fortnite* was first launched on the App Store in March 2018 and in the two years since,
24 *Fortnite* has been reviewed more than 200 times by Apple's app reviewers, and has had Apple push
25 more than 140 unique updates to Apple's customers. With Apple's support, *Fortnite* has grown into
26 an incredibly successful iOS app, enjoying nearly 130 million iOS downloads globally—and earning
27 Epic more than \$550 million through iOS alone. As recently as May 2020, Epic executives recognized
28 and thanked Apple for its support and promotion of *Fortnite* events.

1 6. Apple's support of Epic began even before the initial iOS launch of *Fortnite* in March
2 2018, which occurred through a region-by-region, invite-only user system. Handling the logistics of
3 such a unique app launch required a substantial effort from multiple members of both the App Store
4 and Developer Relations team. From that point on, through multiple major update launches and holiday
5 seasons, Apple's App Store team provided all-hands-on-deck treatment to address Epic's non-stop
6 asks, which frequently involved middle-of-the-night calls and texts demanding short-turnaround
7 support requests, which Apple consistently accommodated. Ultimately, I brought a business
8 development colleague stationed in Australia onto the Epic relationship team, so that we could provide
9 Epic with 24-hour coverage.

10 7. The 2018 holiday season launch provides a number of examples of services that Apple
11 provided to Epic in consideration of and in response to its demands. In particular, Epic requested an
12 exemption from Apple's then-in-place guideline against gifting within apps. As a general rule, Apple
13 had prohibited live in-game gifting because such activity, if left unregulated, can be a major vector for
14 fraud if not carefully monitored. Because of this, I worked closely with my team at the App Store—in
15 conjunction with Apple's executives and App Review team—to create a new guideline that would
16 allow for gifting when certain safety requirements are met. After much consideration and listening to
17 Epic's request, the leadership team decided that gifting could be allowed with certain protections. This
18 guideline change allowed players to gift items to other users within certain apps, including *Fortnite*,
19 while also ensuring the privacy, safety, and security of Apple's iOS users and developers. This example
20 demonstrates Apple's attentiveness to the developer community, including the needs of developers like
21 Epic, which in this instance made a request that Apple could accommodate on terms that would apply
22 equally to all developers, large and small, and that would at the same time adequately ensure user safety
23 and security.

24 8. Following *Fortnite*'s first year on the App Store, Apple continued to work vigorously
25 to meet Epic's frequent and labor-intensive demands. For example, in 2019 alone, Apple expedited
26 app review in response to almost all of Epic's more than 80 rush requests, even though developers are
27 typically required to make such expedited requests only in extenuating circumstances. Apple similarly
28 expedited propagation of *Fortnite* updates across App Store storefronts on several occasions when Epic

1 proclaimed that its particular launch timing was critical in order to ensure seamless and simultaneous
 2 cross-play across different platforms, like iOS and those related to game-consoles like Xbox and
 3 PlayStation. Epic consistently threatened to release the game update on other platforms first, leaving
 4 the App Store behind, if Apple could not accommodate their requests.

5 9. In addition to providing engineering, technical, and hardware-related support, Apple has
 6 also provided Epic with an extraordinary amount of marketing and promotion support for *Fortnite*—
 7 again, as much as Apple has provided to any other game in recent history.

8 10. Apple has provided both paid and organic marketing for *Fortnite* on iOS, including
 9 through Apple’s App Store mailing lists. From March 15, 2018 through August 14, 2020, Apple paid
 10 for advertising on various media channels that drove almost a half-million *Fortnite* transactions at a
 11 channel level (*i.e.*, transactions that occurred within 24 hours of an ad-click directing users to the App
 12 Store, where they then downloaded the *Fortnite* game for the first time). In addition, Apple advertising
 13 drove more than 100,000 additional *Fortnite* (non-first-time) re-downloads during that same period. In
 14 the 11 months preceding the removal of *Fortnite* from the App Store on August 13, 2020, Apple spent
 15 approximately one million dollars on paid media promotions of *Fortnite*. And through its mailing lists,
 16 Apple has sent over 500 million marketing communications about *Fortnite* to end users.

17 11. Apple has also published many social media posts promoting *Fortnite* on Apple’s own
 18 Twitter and Facebook accounts. Each time Epic released a new season of *Fortnite*, Apple put it in the
 19 spotlight, providing free promotion and favorable tweets. This form of support is one that Epic has
 20 continually pressed Apple to provide, given Epic’s heavy reliance upon social media to promote its
 21 products and build its community. To promote concerts taking place in *Fortnite*, Apple has featured
 22 the app on the App Store and in Apple Music, and placed billboards in New York’s Times Square and
 23 LA Live to promote an in-app *Fortnite* concert with DJ Marshmello.

24 12. In response to repeated requests by Epic, Apple also has permitted *Fortnite* to “take
 25 over” the App Store, featuring the app prominently on the App Store’s most sought-after and frequented
 26 spaces. Specifically, in conjunction with the October 2019 launch of *Fortnite*’s Chapter 2, *Fortnite*
 27 was the featured app on the App Store’s “Today” tab—which is the default homepage tab when one
 28 opens the App Store—for 24 hours straight. *Fortnite* was simultaneously provided with a “full-screen

1 takeover” of the App Store’s “Games” tab globally—except in greater China where *Fortnite* is not
2 approved for distribution—for a full seven days. No other game has ever been featured as prominently
3 on the App Store at any time either before or since. Such placement on the App Store substantially
4 drives growth in a particular app’s user base because the individuals that frequent these App Store
5 “tabs” are a self-selecting pool of curious iOS users who are open to browsing and downloading new
6 games or reengaging with a favorite game. Multiple individuals at Epic were extremely satisfied with
7 the results of Apple’s decision to allow them to “take over” the App Store tabs in this way.

8 13. In addition, Apple has run numerous large editorial features for multiple Epic apps in
9 the App Store every few weeks—for example, art placement at the top of the App Store “Games” tab,
10 as well as other “major beats” features and a host of smaller ones. In fact, since the day that it launched
11 in March 2018, the *Fortnite* app has almost always been featured on some portion of the App Store in
12 one of its 175 storefronts worldwide.

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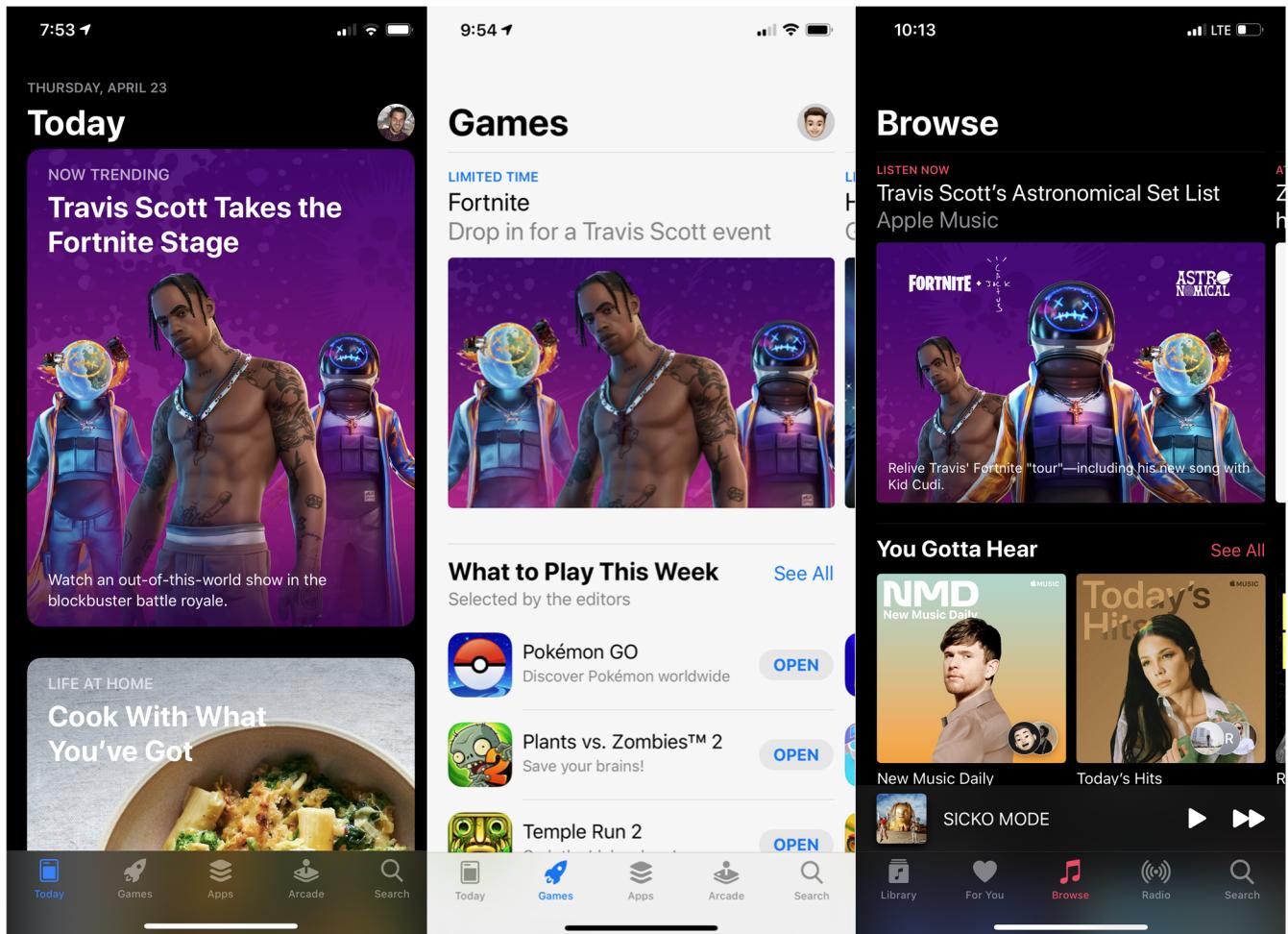
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1 14. As recently as April 23, 2020, for example, the App Store prominently featured
 2 *Fortnite*'s Travis Scott in-app concert event in the number one spot on its "Today" homepage tab, App
 3 Store's "Games" tab, as well as a feature in Apple Music as seen in these true and correct screenshots:



19 In response, Epic President Adam Sussman sent Apple's Matt Fischer an email stating, "This is just
 20 awesome ! Thank you so much for the support." Mr. Sussman stated the following in a subsequent
 21 email that same day: "This is great support and we were so excited to see this in the store. We are
 22 looking forward to an amazing event and working together on our future calendar." He also mentioned
 23 that Epic was "super bullish" about the event. Epic Co-Founder Mark Rein similarly wrote, "Thank
 24 you so much for the support! It's going to be a really fun event and we've got more fun stuff planned
 25 for the next few weeks and months. Please extend our thanks and well wishes to your team!"

26 15. More broadly, during his closing remarks at the March 22, 2019 Gaming Developers
 27 Conference, Epic CEO Tim Sweeney expressly thanked Apple, alongside other games-platform
 28 providers, "for the great . . . opening up that they've enabled the past year." As Mr. Sweeney explained:

1 “Their support made it possible to run *Fortnite* seamlessly across seven platforms and grow to reach
 2 almost 250 million players worldwide. You know, all these efforts, all these companies working
 3 together, [is] making gaming better for everybody.”

4 16. Apple has also consistently provided consultations to Epic to help the company improve
 5 its own marketing, especially its performance marketing. Apple has connected Epic’s *Fortnite* team
 6 with Apple personnel in the UAE, Latin America, South Korea, and other regions to provide market
 7 intelligence and feature opportunities in those regions to support Epic’s expansion efforts.

8 17. While all developers to some degree take advantage of the support and guidance that
 9 Apple provides, again, Epic has demanded a much greater degree of support from Apple. For example,
 10 Apple has held weekly telephone check-ins with Epic representatives to stay abreast of issues and
 11 coordinate our efforts—a much higher degree of such contact than Apple has with other game
 12 developers. When Epic launches a new *Fortnite* version or announces new features, Apple has
 13 provided Epic with feedback on many things, including gameplay design, marketing, monetization,
 14 and best practices with Apple’s technology.

15 18. On a variety of occasions, Epic personnel have told me that if Apple did not comply
 16 with its demands, Epic would simply terminate its relationship with Apple and remove its games off
 17 of the iOS platform. Epic has repeatedly told me that it could do this because Apple is the “smallest
 18 piece of the pie” when it came to *Fortnite* revenue. On several occasions, Epic personnel have told me
 19 that Apple represents just seven percent of Epic’s revenue. The data available to Apple largely bears
 20 this out. With respect to *Fortnite*, all of the App Store’s competing platforms besides Google’s Android
 21 have a higher Average Revenue Per Daily Active User (ARPDAU) than does Apple iOS, with some
 22 platforms—like Xbox and PlayStation—a full 70% or 40% higher than iOS, respectively.

23 19. Epic has repeatedly leveraged the global phenomenon that was *Fortnite* to coerce
 24 platforms to change their rules. For example, in September 2018, Epic quietly updated *Fortnite* to
 25 enable cross-platform play between PlayStation and Xbox. This was explicitly against PlayStation’s
 26 rules and Epic pushed PlayStation into a difficult situation with its own user base, where it was forced
 27 to make a significant change on Epic’s terms, not its own. Epic’s strategy of coercing platforms for its
 28 own gain, under the guise of being “pro-gamer,” is something Epic continues to do.

1 20. Epic also runs Unreal Engine, a game-development software platform on which Epic
2 bases many of its own games, like *Fortnite*, and that it licenses to other developers to use as the software
3 platform for their apps. Unreal Engine is a popular development engine used by many developers on
4 iOS and other platforms. Apple acknowledges and supports the thriving ecosystem of third-party tools
5 and services that developers use to build apps, including Unreal Engine. In fact, Apple has gone above
6 and beyond many times to support and strengthen Unreal Engine's capabilities on iOS and Mac.

7 I declare under penalty of perjury under the laws of the United States and the State of California
8 that the foregoing is true and correct, and that I executed this declaration on the 15th day of September,
9 2020 in Sunnyvale, California. 



Miles Goldsmith

Mike Schmid